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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)
)
Petition for Rulemaking of Pacific)
Bell Mobile Services Regarding a)
Plan for Sharing the Costs of)
Microwave Relocation)

RM-8643

To: The Commission

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COMMENTS

BellSouth Corporation, BellSouth Telecommunications, Inc., BellSouth Enterprises, Inc., BellSouth Wireless, Inc., and BellSouth Personal Communications, Inc. (collectively "BellSouth"), by their attorneys, hereby submit comments in response to the petition for rulemaking filed by Pacific Bell Mobile Services ("PBMS") regarding a plan for sharing the costs of relocating microwave licensees.¹

In its petition, PBMS proposes a plan for allocating the costs of microwave relocation among all PCS licensees that benefit from the relocation and urges the Commission to initiate a rulemaking on the issue of such cost sharing. BellSouth generally concurs and has been working with the Personal Communications Industry Association ("PCIA") to reach an industry consensus as to how such a system should work. Several aspects of the PBMS plan, however, conflict with the developing industry consensus. BellSouth opposes the aspects of the PBMS plan discussed below, which deviate from the industry consensus.

¹ See Pacific Bell Mobile Services' Petition for Rulemaking (May 5, 1995), FCC Public Notice, Report No. 2073 (May 16, 1995) ("Petition").

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I. A Reasonable Cap Should Be Imposed On Recoverable Costs

BellSouth concurs with PBMS that any cost sharing mechanism should set a cap on the amount that can be recovered for relocating a microwave licensee.² PCS licensees wishing to clear spectrum as quickly as possible may be willing to pay a premium to induce incumbent microwave licensees to relocate sooner than they would otherwise be required. Any such premium should be borne entirely by the PCS licensee that agreed to pay it, and therefore such premiums should not be recoverable from other PCS licensees. A licensee with no immediate need to relocate a given microwave path should not have to pay any portion of the premium that another licensee unilaterally agreed to pay for accelerated relocation.³ A cap on the costs that may be recovered from other PCS licensees allows a PCS licensee to pay a premium, if it chooses to do so, but prevents that licensee from passing off such premiums to others who did not agree to the higher cost of rapid relocation.

Additionally, even though an incumbent microwave licensee only is entitled to “comparable facilit[ies] at minimum cost to the new service provider,” microwave incumbents will undoubtedly view the cap as the starting point for negotiations regarding the amount they should receive for relocating.⁴ A large cap would encourage incumbent microwave licensees to hold out

² Petition at 10-11.

³ Licensees that were not involved in the negotiations for expedited relocation may thus receive the benefit of that expedited relocation, but it would be neither fair nor reasonable to impose cost-sharing obligations on them for premiums to which they might have objected in negotiations because they would have been willing to accept a slower relocation pace.

⁴ The PCS licensee (“Relocator”) relocating an incumbent microwave licensee must pay for all engineering equipment, site and FCC fees associated with relocation, as well as any additional costs that the relocated licensee might reasonably incur as a result of
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for superior facilities, thus increasing the cost related to comparable systems of microwave relocation and making it less likely that the compensation will be closely tied to costs.

The consensus among potential PCS providers is that \$250,000 per link is a reasonable upper limit for relocation expenses and an upper limit of \$150,000 for towers if new towers are required. Thus, there would be a total cap of \$400,000 made up of two components. Many links can be relocated for substantially less than this amount.

Establishing a cost sharing cap of \$600,000 could well encourage incumbent microwave licensees to seek significantly upgraded facilities or other premiums from PCS licensees, knowing that the PCS licensee with whom they are negotiating would be able to pass off a portion of the excessive costs to later entrants. This is clearly not what the Commission intended. BellSouth strongly suggests that the cap be established at a level more in line with industry consensus.

Finally, the Commission should condition all PCS licenses on compliance with any cost sharing rules ultimately adopted in this proceeding. The formula adopted should establish the amount due the Relocator from other PCS licensees benefiting from the relocation. A subsequent PCS licensee should not be able to negotiate the amount due under the formula.⁵

⁴ (...continued)
operation in another band or medium. The Relocator is not obligated to pay for any other expenses. 47 C.F.R. § 94.59.

⁵ Petition at 10.

II. Cost Sharing Should Be Limited To Costs Associated With Relocating Co-Channel Microwave Licensees Within A PCS Licensee's Service Area

BellSouth urges the Commission to limit its cost sharing analysis to the costs associated with avoiding *co-channel* interference problems. Resolving co-channel interference problems will be a massive and complicated task. Because PCS and microwave licensees have different channelization, a given microwave user may be co-channel with several PCS licensees. Nevertheless, the co-channel PCS licensees who would benefit from the relocation of particular microwave facilities can be readily identified and included in a cost-sharing system. Accordingly, all PCS licensees benefiting from the relocation of a co-channel facility should be required to participate in the cost sharing proposal, as outlined by PCIA.

Conversely, it is difficult to determine which PCS licensees would benefit from the relocation of microwave licensees on adjacent channels and, thus, it is not clear which "adjacent" PCS licensees should share in the cost of relocation. To avoid needless litigation over this issue, the Commission should allow the Relocator to recover costs from co-channel licensees only. No significant "free rider" problem can be expected from this arrangement, because the payments by licensees should balance out the benefits in most cases.⁶

For purposes of determining which PCS licensees should be required to share the cost of relocating a co-channel microwave licensee, the Commission should specify that only those PCS licensees in the market in which a given facility is located are obligated to share the cost of relocation. If a cost sharing rule is not limited in this manner, a PCS licensee could be required

⁶ In the long run, the Relocator will not lose because contributions by adjacent PCS channel licensees that are lost will be offset by contributions the Relocator will not have to make to others for relocating adjacent channel microwave licensees.

to share the cost of relocating a microwave facility located hundreds of kilometers away from its market border. The process is greatly simplified and administrative burdens are reduced if cost sharing is only required for co-channel microwave links having an end point within a PCS licensee's authorized operating territory. A multitude of other PCS providers may benefit from the relocation of out-of-region microwave links with which they would have interfered were it not for the relocation, but the benefits of a simple, understandable, and straightforward policy greatly outweigh any loss in being able to allocate each minute cost to every imaginable beneficiary.

III. A Clearinghouse Should Be Created To Administer The Cost Sharing Plan

In adopting cost sharing rules, the Commission should also create a clearinghouse to administer the rules. Specifically, BellSouth urges the Commission to designate one entity to act as the coordinator of frequency relocation (the "Coordinator"). Under this approach, all contracts regarding relocation would be filed with the Coordinator to establish the price paid for relocation. Further, all PCS licensees would be required to send a copy of their Prior Coordination Notice of their PCS system design to the Coordinator. If the Coordinator determines that a PCS licensee would have interfered with an in-market, co-channel microwave licensee, *but for* relocation of that licensee, the Coordinator will notify the licensee of the portion of the relocation expense it must pay to the Relocator.⁷

⁷ The Commission clearly has the authority to use private frequency coordinators for fixed services, as well as the authority to condition licenses as needed to serve the public interest. *See* 47 U.S.C. §§ 303(r), 332(b)(1). Thus, the Commission should condition PCS licenses on compliance with the cost-sharing plan administered by the Coordinator, pursuant to the criteria established by rule. Under this scenario, once the Coordinator determines the amount that a PCS licensee must contribute under the Commission's

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Apparently, the only objection PBMS has to such a proposal is that it could take too long to implement, given the experience with UTAM.⁸ BellSouth disagrees. Unlike UTAM, the Coordinator would not be responsible for funding relocation. Thus, the delay associated with establishing a funding mechanism would be eliminated -- no funds would have to be raised. PCS licensees wishing to enter into relocation agreements could do so secure in the knowledge that they would be reimbursed based on the Commission's formula, once the Coordinator is in place. BellSouth does not believe that licensees would be deterred from relocation negotiations until a Coordinator is named and functioning. This is true because PCS licensees, unlike the unlicensed PCS users, will have invested large sums in acquiring their licenses at auction and need to build-out quickly to begin earning a return on that investment.

IV. The Voluntary Negotiation Period Should Be Shortened

In adopting rules for sharing the cost of relocation, BellSouth urges the Commission to shorten or eliminate the voluntary negotiation period for non-public safety licensees. The current two-year voluntary relocation period is too long and allows an incumbent microwave licensee to prevent clearing of 2 GHz spectrum for three years (*i.e.*, the two year voluntary and one year mandatory negotiation periods).⁹ Because incumbent licensees are entitled to compara-

⁷ (...continued)
formula, that licensee's license could be forfeited, or a fine imposed, if it failed to reimburse the Relocator promptly. *See* discussion *supra* at page 3.

⁸ *See* Petition at 6. UTAM is the entity responsible for relocation of microwave licensees for purposes of unlicensed PCS applications. *See* 47 C.F.R. § 15.307; *see also* *Amendment of the Commission's Rules to Establish New Personal Communications Systems*, GEN Docket No. 90-314, *Second Report and Order*, 8 FCC Rcd. 7700, 7736-37 (1993).

⁹ 47 C.F.R. § 94.59.

ble facilities on other bands or media, there is no need for an extended voluntary negotiation period. An extended voluntary negotiation period only encourages incumbent microwave licensees to delay relocation in the hope of striking a better deal. This delay in relocation potentially delays the deployment of PCS systems. Additionally, allowing incumbents to delay relocation gives them the opportunity and incentive to demand a premium from the PCS licensee and thus increases the cost of PCS service to the public.

CONCLUSION

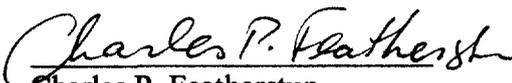
For the foregoing reasons, BellSouth urges the Commission to issue a Notice of Proposed Rule Making consistent with its comments and the industry consensus developed through PCIA.

Respectfully submitted,

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